

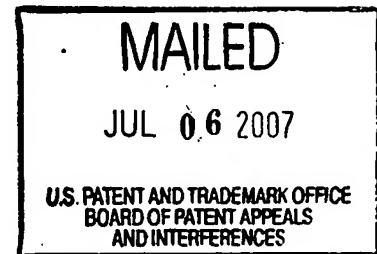
The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DWIP N. BANERJEE, RAKESH SHARMA and VASU
VALLABHANENI

Application 10/006,059
Technology Center 2100



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This Image File Wrapper (IFW) application was electronically received at the Board of Patent Appeals and Interferences on June 28, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

Two required headings are not present in the Appeal Brief received by the USPTO on October 26, 2005. The headings are:

EVIDENCE APPENDIX as required by 37 C.F.R. § 41.37(c)(1)(ix);

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to ' ' 1.130, 1.131, 1.132 of this

title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See ' 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on

and the

RELATED PROCEEDINGS APPENDIX as required by 37 C.F.R. §

41.37(c)(1)(x).

(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See ' 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or with any appeal and ' 41.33 for amendments, affidavits or other evidence filed after the date of the appeal.

Section 37 CFR ' 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR

Application 10/006,059

41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the office requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

Accordingly, it is

ORDERED that the application is returned to the Examiner:

(1) hold the Appeal Brief filed October 26, 2005, defective;


(2) notify appellants to file a “paper” in compliance with 37 CFR ' 41.37,

providing:

a) the appendix headings, Evidence and Related Proceedings;

(3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
DALE M. SHAW
Chief Appeals Administrator
(571) 272-9797

IBM CORPORATION (VE)
C/O VOLEL EMILE
P.O. BOX 162485
AUSTIN, TX 78716

DMS:tlc